

In the Matter of

WC Docket No. 16-363

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I. There is Widespread Consensus that the Commission Should Promptly Deny the Petition

The filings in this proceeding reflect nearly universal agreement that forbearance is not the appropriate procedural vehicle for addressing the issues that AT&T raised.¹ Indeed, all but one urged the Commission to deny the Petition, recognizing that AT&T failed to meet its burden to demonstrate that the statutory forbearance requirements had been met.² Accordingly, the Commission should promptly issue a decision that the Petition fails to meet the standards for forbearance under Section 10(a) of the Communications Act of 1934, as amended, (the "Act"), which is codified at 47 U.S.C. section 160(a). Since the statutory requirements have not been met, delaying a denial would serve no valid purpose, and it would create the risk that the Petition could be granted by default if the Commission fails to issue the denial by the statutory deadline.

II. A Broader Discussion of the Relevant Issues is Warranted

Although a petition for forbearance is not appropriate, the issues that AT&T raised can and should be addressed in a broader, more holistic fashion.³ HD Tandem believes that technological solutions can be implemented to address many of the issues. As West Telecom Services, LLC, correctly explains:

In this case, the public interest demands that the regulatory reforms the Petition seeks be considered holistically and comprehensively with the context of the CAF proceeding and its extensive

¹ See, e.g., Comments of NTCA - The Rural Broadband Association, WC Docket No. 16-363, 22 (filed Dec. 2, 2016) (opposing the Petition because "lawfully-filed tariffs are already subject to regulatory oversight, and entities that dispute tariffed charges can seek relief via the tariff dispute process or seek resolution via a complaint process against individual firms, if warranted" and "a pending rulemaking proceeding address this issue is under current consideration at the Commission, and a forbearance petition ought not be used to supplant that active docket"); Reply Comments of Texatel, WC Docket No. 16-363, 4 (filed Dec. 12, 2016) (opposing the Petition because forbearance is the "wrong process to consider the complex issues associated with AT&T's proposal") and Comments of WTA - Advocates for Rural Broadband and Eastern Rural Telecom Association, WC Docket No. 16-363, 1 (filed Dec. 2, 2016) (opposing the Petition because "AT&T is attempting to misuse the forbearance procedure for an unintended purpose - in this case, as a customer (and on behalf of other customers) seeking to avoid paying small rural LECs and others for the use of their networks"); Comments of the Nebraska Rural Independent Companies (NRIC), WC Docket No. 16-363, 3 (filed Dec. 2, 2016) (opposing the Petition because "AT&T's effort to pre-determine the outcomes of issues already pending before the Commission should be rejected. AT&T should not be allowed to circumvent the Commission's *FNPRM*. If AT&T's plea ... has any basis, AT&T should be required to address those pecuniary business objectives in the context of the *FNPRM*, thereby allowing the Commission the full flexibility under the APA to fashion the form of relief *that the Commission determines to be required by the public interest.*") (emphasis in original).

² See generally Verizon Comments, WC Docket No. 16-363 (filed Dec. 2, 2016) (supporting the Petition, presumably in an effort to impose a deadline on the Commission for further action, which, as HD Tandem explained in its opening comments, would not be appropriate).

³ See Comments of NCTA - The Internet & Television Association, WC Docket No. 16-363, 1 (filed Dec. 2, 2016) ("While NCTA agrees with AT&T that it is important for the Commission to eliminate incentives for arbitrage by completing the ICC reforms it started in 2011, the preferred method for doing so would be through a comprehensive rulemaking proceeding rather than the piecemeal forbearance AT&T seeks here.").

evidentiary record, not in this forbearance proceeding. Upon painstaking review of the CAF's proceeding record, the Commission specifically *declined* to adopt the reforms that AT&T's petition now requests be imposed. Indeed, any grant of the requested forbearance would contravene both (1) the findings of the *USF/ICC Transformation Order* and (2) the Commission's goal of ensuring all inter-related intercarrier compensation reforms are implemented through a holistic approach, rather than through piecemeal reforms such as those AT&T now seeks.⁴

These types of solutions can be reached by the industry with good-faith participation in discussions and thought leadership. To the extent industry discussions would benefit from further assistance, the Commission could host workshops.⁵ To the extent further regulatory actions are necessary the Commission should address the relevant issues as part of the pending 2011 Transformation Order Further Notice of Proposed Rulemaking⁶ by requesting interested parties to refresh the record. In short, the industry can and should address the issues that AT&T raises, which the industry should support without permitting abuse of the statutory forbearance procedures or rushing to adopt further regulation in a piecemeal fashion.

III. Conclusion

HD Tandem is cautiously optimistic that industry can effectively address the issues that AT&T has raised by working together in good faith and leveraging available technologies. The Commission can assist the process as necessary, or consider adopting further rules in a rulemaking proceeding if doing so would serve the public interest. But further proceedings should be initiated only after efforts by the industry to work together have failed, at which point the proper procedural vehicle would be a rulemaking proceeding, not a forbearance proceeding.

⁴ Motion for Summary Denial of and Opposition to AT&T Petition from Consolidated Communications Companies and West Telecom Services, LLC, WC Docket No. 16-363, 3 (filed Dec. 2, 2016).

⁵ See also Comments of Centurylink, WC Docket No. 16-363, 3 (filed Dec. 3, 2016) (“A more balanced approach will be needed to address these open issues as well”); *id.* at 8 (“The Commission should also proceed with caution when it comes to addressing the broader ICC reform issues that remain pending in the Commission's ICC FNPRM docket.”).

⁶ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal- State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (*Transformation Order*) (subsequent regulatory history omitted), *aff'd sub nom.*, *In re: FCC 11-161*, Nos. 11-9900, *et al.*, 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied*, 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al.*).

Respectfully submitted,

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